

Edinburgh Leisure and others - whether a supply of services to Local Authority is subsidy or grant

This Tribunal case is interesting for the pointers it gives about when a grant or subsidy paid by a local authority is actually payment for supplies to the local authority.

Contrary to their normal approach, (and to the Memorandum of Understanding about leisure) Customs in the above case argued that the grant paid to three non profit making bodies (NPMBs), which ran leisure centres outsourced by various local authorities, was outside the scope, and that the only supplies made by the leisure centres were to the individuals who used the facilities. These services would be heavily exempt as they were supplied by eligible bodies, meaning that the leisure centres achieved low input VAT recoveries. If the grant received was payment for taxable supplies to the local authorities this would boost the leisure centres' VAT recovery without creating any cost to the authorities which could recover the VAT charged.

Consideration was given as to whether the local authorities needed the services supplied by the leisure centres or just wanted them – the answer was they needed them as it was their statutory duty to provide low cost leisure facilities to those who could not afford to pay the prices charged by commercial providers. Thus there was a benefit to the local authorities in using the NPMBs. The more efficient and financially effective provision of leisure facilities by use of a NPMB was also a benefit. This meant the NPMBs were making supplies to the local authorities.

Customs argued the payments were in the public interest and were not for supplies to the local authorities. The existence of conditions and supervision of how the money was spent did not change this – these were merely safeguards to ensure public money was spent properly. They said the NPMBs were not managing the centres for the local authorities as the NPMBs controlled the assets and employed their own staff and only supplied leisure facilities to the users of the centres at a price subsidised by the local authority grants. The Tribunal found the local authorities were not making a grant to the NPMBs to enable them to operate for their own purposes. They were making a payment to the NPMBs so that the NPMBs could operate in accordance with the local authorities' wish to fulfil their statutory duty to provide leisure for all. This was therefore payment for a taxable supply to the local authorities, which meant the NPMBs were supplying both the local authorities and the users of the facilities.